

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC.,
1110 Vermont Avenue NW
Washington, DC 20005,

Plaintiff,

v.

Civil Action No. 19-350

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201,

Defendant.

COMPLAINT

Plaintiff, by and through its attorneys, hereby alleges as follows:

Introduction

1. Plaintiff Planned Parenthood Federation of America, Inc. (“Planned Parenthood”) brings this action against Defendant U.S. Department of Health and Human Services (“HHS” or “the agency”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. Title X of the Public Health Service Act, 42 U.S.C. §§ 300–300a-8, makes family planning services available for free or at low cost to Americans in all states. The Title X program

was designed to ensure access to comprehensive family planning and preventive health services, particularly for people with lower incomes.

3. Millions of Americans have relied on the Title X program for essential reproductive health care services. But now, the Trump-Pence Administration has sought to shift the Title X program away from its core statutory purpose, threatening irreparable harm to the very patients Title X was meant to help. Planned Parenthood has sought records through FOIA to uncover the reasoning and influences underlying the agency's harmful changes to the program.

4. FOIA requires that HHS provide a response within thirty working days of Planned Parenthood's request. *See* 5 U.S.C. §§ 552(a)(6)(A)(i), -(B)(i). Over four months have passed, and HHS has failed to provide a response or produce any documents. Accordingly, Planned Parenthood sues to compel the production of responsive records.

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

7. Planned Parenthood has exhausted its administrative remedies. *See* 28 U.S.C. § 552(a)(6)(C)(i).

Parties

8. Plaintiff Planned Parenthood Federation of America, Inc., a not-for-profit organization, is the nation's leading provider of and advocate for high-quality, affordable sexual and reproductive health care for women, men, and young people, as well as the nation's largest provider of sex education. Through more than 600 health centers across the country, Planned

Parenthood affiliates care for over 2.4 million patients each year with compassion and respect, and without judgment.

9. Defendant U.S. Department of Health and Human Services is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and it is headquartered in Washington, D.C. HHS has possession, custody, and control of records to which Planned Parenthood seeks access.

Factual Allegations

10. In 1970, Congress created the Title X Family Planning Program, 42 U.S.C. §§ 300–300a-8, to ensure that all people, and especially women with low incomes, have access to comprehensive family-planning care. Title X annually provides hundreds of millions of dollars to HHS “to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects.” 42 U.S.C. § 300(a).

11. The Title X grant program is competitive: state governments, local governments, tribal entities, and nonprofit organizations vie with one another for grants. Within HHS’s Office of the Assistant Secretary of Health, the Office of Population Affairs oversees the Title X program.

12. Planned Parenthood serves an essential role in the delivery of Title X care. Each year, Planned Parenthood serves roughly 40% of Title X’s patients—approximately 1.6 million people.

13. Since President Trump’s inauguration in January 2017, HHS has announced a series of abrupt policy reversals, apparently driven by extreme ideology rather than evidence-based policy goals. These reversals jeopardize sexual- and reproductive-health programs like Title X.

14. For example, the current administration’s budgets for FY2018 and FY2019 requested that Planned Parenthood be “defunded” by eliminating its eligibility for HHS funding streams, including Title X.¹ Failing to “defund” Planned Parenthood through the budget, the administration has sought to exclude Planned Parenthood from the Title X program through other means.

15. On August 3, 2017, however, HHS ended all existing Title X grants, effective either March 31, 2018, or June 30, 2018. As a result, *all* Title X grants opened for competition on February 23, 2018, when HHS issued the FY2018 Title X Funding Opportunity Announcement: FOA No. PA-FPH-18-001 (the “2018 FOA”).

16. The 2018 FOA announced dramatic changes to HHS’s Title X priorities, requiring that grantees place a “meaningful emphasis” on abstinence as an approach to birth control, even for adults; provide onsite primary care; and cooperate with faith-based organizations. Incredibly, the 2018 FOA omitted any reference to contraception or to HHS’s own published standards for evidence-based family-planning care. These changes seem to be designed to disadvantage reproductive health care providers like Planned Parenthood in the Title X grant competition—and ultimately, to undermine the Title X program’s intended function of supporting comprehensive family-planning care.

¹ Office of Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2018 (2017); Office of Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2019 (2018); Office of Mgmt. & Budget, Exec. Office of the President, Fact Sheet: The President’s Fiscal Year 2018 Budget: Overview (2017), *available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Budget%20Overview.pdf; U.S. Dep’t of Health & Human Servs., FY 2019 Budget in Brief 7 (2018), *available at* <https://www.hhs.gov/sites/default/files/fy-2019-budget-in-brief.pdf>.

17. Given these changes, organizations that do not provide comprehensive reproductive health care sought the opportunity to participate in the Title X program.²
18. In August 2018, HHS issued notices of Title X awards to FY2018 grantees for a term of only seven months,³ from September 2018 through March 2019, rather than for the usual three-year term.
19. On September 25, 2018, Planned Parenthood filed a FOIA request with HHS seeking, among other things, records regarding the 2018 FOA and the distribution of Title X awards pursuant to that FOA.

20. Specifically, Planned Parenthood seeks the following records:
 - 1) A copy of all non-binding letters of intent submitted in response to Funding Opportunity Number PA-FPH-18-001. Alternatively, a comprehensive list of the identities of all persons or entities that submitted a non-binding letter of intent in response to Funding Opportunity Number PA-FPH-18-001.
 - 2) A copy of any record, excluding applications, listing the identities of applicants that submitted an application in response to Funding Opportunity Number PA-FPH-18-001.
 - 3) A copy of any records that include the identities of applicants that HHS determined were ineligible or otherwise disqualified for funding under Funding Opportunity Number PA-FPH-18-001.
 - 4) A copy of any records, excluding applications, that include the basis for a determination of an applicant's ineligibility or non-funding under Funding Opportunity Number PA-FPH-18-001.
 - 5) A copy of any records that include the identities of applicants that HHS rejected or did not approve for funding under Funding Opportunity Number PA-FPH-18-001.

² See Victoria Colliver, *Anti-abortion clinics tapping into federal funds under Trump*, Politico.com (Dec. 16, 2018), available at <https://www.politico.com/story/2018/12/16/abortion-pregnancy-centers-planned-parenthood-1007765>.

³ See U.S. Dep't of Health & Human Servs., Recent Grant Awards, available at <https://www.hhs.gov/opa/grants-and-funding/recent-grant-awards/index.html> (last visited Dec. 28, 2018).

- 6) A copy of any records that include the scores given to each application submitted in response to Funding Opportunity Number PA-FPH-18-001.
- 7) A copy of any records that include the names of members of the independent review panels tasked with evaluating applications submitted in response to Funding Opportunity Number PA-FPH-18-001.
- 8) A copy of all records that include the reviewers' scores, scoring decisions, or comments related to applications submitted in response to Funding Opportunity Number PA-FPH-18-001.
- 9) A copy of all records, except for applications but including scoring criteria and guidance, given to members of the independent review panels tasked with evaluating applications submitted in response to Funding Opportunity Number PA-FPH-18-001.
- 10) A copy of Deputy Assistant Secretary for Population Affairs Diane Foley's calendar, including any calendar maintained for her, since her appointment in May 2018.
- 11) A copy of all meeting agenda, notes, minutes, recordings and any other records of and from any meetings between Deputy Assistant Secretary for Population Affairs Diane Foley and any person associated with Live Action, including Lila Rose, or Susan B. Anthony List.
- 12) A copy of communications, including email communications, between Deputy Assistant Secretary for Population Affairs Diane Foley and any person associated with Live Action, including Lila Rose, or Susan B. Anthony List.
- 13) All visitor logs reflecting Lila Rose entering any HHS office building.

21. The request letter is attached hereto as Exhibit A.

22. On September 25, 2018, HHS acknowledged receipt of Planned Parenthood's FOIA request and assigned the request tracking number 18-0349. In its acknowledgement letter, HHS informed Planned Parenthood that the request "falls under 'unusual circumstances' in that the records [sought] are maintained outside of this office and our staff has not yet searched for and collected the responsive records from the office most likely to maintain the records." HHS's acknowledgment letter mentioned only Item Nos. 1–12, omitting Item No. 13.

23. Also on September 25, 2018, HHS requested clarification of Item No. 12 and Item No. 13. Planned Parenthood provided clarification via email that same day, and notified HHS that the agency's acknowledgement letter had failed to mention the request for Item No. 13.

24. On September 26, 2018, HHS informed Planned Parenthood that it had assigned Item No. 13 a separate tracking number—18-0350—because the responsive records would come from a different program office.

25. Thirty working days passed and HHS did not provide a response or any records.

26. As of the filing of this Complaint, HHS has not provided a response to Planned Parenthood's FOIA request. Nor has it produced any responsive documents.

Claim for Relief
Count One
(Violation of FOIA, 5 U.S.C. § 552)

27. Planned Parenthood incorporates by reference the foregoing paragraphs as if fully set forth herein.

28. By failing to respond to Planned Parenthood's request within the statutorily prescribed time limit, HHS has violated its duties under 5 U.S.C. § 552 and its own regulations implementing FOIA at 45 C.F.R. §§ 5 *et seq.* These duties include, but are not limited to, the duties to notify Planned Parenthood of its determination and justifications; to conduct a reasonable search for responsive records; and to produce non-exempt responsive records.

Request for Relief

WHEREFORE, Planned Parenthood requests that this Court:

1. Order HHS to conduct a search for any and all records responsive to Planned Parenthood's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;

2. Order HHS to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. Enjoin HHS from continuing to withhold any and all non-exempt responsive records;
4. Order HHS to grant in full Planned Parenthood's request for a fee waiver;
5. Award Planned Parenthood its costs, attorneys' fees, and other disbursements for this action; and
6. Grant any other relief this Court deems appropriate.

Dated: February 12, 2019

Respectfully submitted,

/s/ Richard Muniz

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**Pro hac vice application forthcoming*